

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**EDWARD AND JOANN AGOSTINELLI,**

**Plaintiffs,**

**v.**

**FIFTH THIRD BANK, FIFTH THIRD  
MORTGAGE COMPANY, TRACKSURE  
INSURANCE AGENCY, INC., A DIVISION  
OF ASSURANT, INC.; EQUIFAX  
INFORMATION SERVICES, INC.;  
EXPERIAN INFORMATION SOLUTIONS,  
INC., AND TRANSUNION, LLC,**

**Defendants.**

**CIVIL ACTION NO. CV-10-294-CG-B**

**TRACKSURE INSURANCE AGENCY, INC.'S MOTION TO DISMISS**

COMES NOW Defendant, TRACKSURE INSURANCE AGENCY, INC ("TrackSure") by and through its counsel, pursuant to Rules 8(a)(2) and 12(b)(6) of the Federal Rules of Civil Procedure, and moves the Court to enter an order dismissing all of the claims against TrackSure in this action with prejudice. As grounds in support of its motion, TrackSure states the following, to-wit:

1. Plaintiffs' complaint must be dismissed because it fails to meet the pleading requirements of Fed. R. Civ. P. 8(a)(2) and *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. \_\_\_, 129 S.Ct. 1937 (2009).

2. Plaintiffs' complaint must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because it fails to state a claim against TrackSure upon which relief may be granted.

3. Plaintiffs have no standing to bring any claims against TrackSure, as there is no relationship (no privity) between Plaintiffs and TrackSure, and none has been alleged.

4. Plaintiffs' complaint must be dismissed because TrackSure has been unduly prejudiced and burdened by undue delay, laches, and waiver since the transactions made issue in the complaint appear to have occurred over three (3) years before the filing of the complaint against TrackSure, now leaving TrackSure only three (3) months for discovery and seven (7) months to prepare for trial. [Doc. 10: Scheduling Order with discovery closing in December 2010 and trial set for June 2011].

5. As further grounds in support of this motion to dismiss, TrackSure relies upon its Memorandum of Law filed contemporaneously herewith.

WHEREFORE, premises considered, TrackSure respectfully requests that the Court enter an order dismissing all claims against it in this action, with prejudice.

Respectfully submitted,

s/ John P. Browning

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document by Notice of Electronic Filing, or, if the party served does not participate in Notice of Electronic Filing, by U.S. First Class Mail, hand delivery, fax or email on this the 16th day of November, 2010:

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